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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.
MATTHEW D. MULLER,

Defendant.

CASE NO. 2:15-CR-205 TLN

SENTENCING MEMORANDUM OF THE
UNITED STATES

DATE: March 16, 2017
TIME: 9:00 a.m.
COURT: Hon. Troy L. Nunley

I. INTRODUCTION

Matthew Muller should be sentenced to forty years of incarceration. Muller is extremely dangerous. Public safety requires that he be imprisoned until he is old and weak. Muller's conduct was depraved and egregious: he invaded a stranger's home, kidnapped a woman, video-recorded himself as he raped her, and used elaborate artifice to convince his victims that he was just one member of a professional crew. Just punishment requires that Muller suffer a severe sentence that accounts for the entirety of his culpable conduct.

Forty years in a no-parole system is a very long sentence. Muller earned it through careful planning and hard work. But in this particular non-homicide case, which resolved by a prompt guilty plea, a sentence in excess of forty years would be greater than necessary to comply with the purposes of sentencing.

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1 **II. MULLER’S COMPLETE REAL CONDUCT IS THE BASIS**
 2 **FOR HIS SENTENCE**

3 Kidnapping is the offense of conviction, but Muller’s sentence is based on culpable acts beyond
 4 those necessary to establish the elements of that crime. The objective of federal sentencing, both before
 5 and after the guidelines, is to sentence defendants based on all of their conduct, rather than on what
 6 particular offense was charged. *See United States v. Booker*, 543 U.S. 220, 253 (2005). According to
 7 the Supreme Court, “This point is critically important. Congress’ basic goal in passing the Sentencing
 8 Act was to move the sentencing system in the direction of increased uniformity. That uniformity does
 9 not consist simply of similar sentences for those convicted of violations of the same statute It
 10 consists, more importantly, of similar relationships between sentences and *real conduct*.” *Id.* at 253-54
 11 (emphasis added).

12 The Court has received letters expressing concern that the Defendant will not be punished for the
 13 state crimes that he committed in the course of the kidnapping offense. The Court is well equipped to
 14 address this concern. Real conduct sentencing holds defendants accountable for charged, uncharged,
 15 and even acquitted conduct that occurred during the offense of conviction. *See United States v. May*,
 16 706 F.3d 1209, 1213 (9th Cir. 2013). It holds defendants accountable even for relevant conduct that
 17 federal authorities had no jurisdiction to charge. *See United States v. Yip*, 592 F.3d 1035, 1038 (9th Cir.
 18 2010); *United States v. Newbert*, 952 F.2d 281, 284 (9th Cir. 1991).

19 The sixty-six-page PSR in this case is comprehensive. The core facts of the offense are as
 20 follows:

21 At approximately 3:00 a.m. on March 23, 2015, [Matthew Muller] broke
 22 into Aaron Quinn’s and Denise Huskins’ home on Mare Island in Vallejo,
 23 California. They were restrained, blindfolded, and headphones were
 24 placed over their ears. They were also drugged, and Quinn was directed to
 25 release his financial information and passwords to [Muller]. Huskins was
 26 taken to another room and ultimately kidnapped from her home by
 27 [Muller]. She was placed in the trunk of Quinn’s vehicle, transported to
 28 another vehicle, and placed in the trunk, still blindfolded and bound; she
 was taken to a cabin in South Lake Tahoe, California. Quinn reported the
 kidnapping to the Vallejo Police Department (VPD) at approximately 1:53
 p.m. after he woke up from being drugged. Between March 23, 2015, and
 March 24, 2015, Huskins was sexually assaulted on two occasions. On
 March 25, 2015, sometime in the morning hours, Huskins was released by
 the subject in Huntington Beach, California.

PSR ¶ 5. The advisory guidelines range is increased for each of these aspects of Muller’s relevant conduct: he made a ransom demand, he threatened his victims with an apparent weapon, he raped a victim, and threatened to harm her family if she spoke to law enforcement. PSR ¶¶ 71-82; U.S.S.G. § 2A4.1; U.S.S.G. § 3C1.1.¹ But even then, “the Guidelines are not the only consideration.” *Gall v. United States*, 552 U.S. 38, 49 (2007). Federal sentencing requires an individualized assessment in light of all the facts presented. *Id.*

The victims have submitted detailed, courageous statements regarding the terrifying and continuing effect Muller’s offense has had on them.² Dkt. 51-2. Notwithstanding the fact that only one victim was actually carried away and raped in the course of the offense, both qualify as victims because they were both “directly and proximately harmed as a result” of the kidnapping. *See* 18 U.S.C. § 3771(e)(2)(A). No prosecutor’s summary could better express the horror of Muller’s crime.

III. THE STATUTORY FACTORS FAVOR A SENTENCE OF FORTY YEARS IMPRISONMENT

A. Introduction

The remainder of this Sentencing Memorandum focuses on concerns outside the Guidelines that favor a sentence of forty years. Muller committed the Vallejo kidnapping as part of a series of similar crimes. Muller’s serial crimes show his dangerousness and merit a very lengthy sentence “to protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C). Muller’s premeditated psychological manipulation of the victims is not captured by the Guidelines and weighs against a variance below forty years. 18 U.S.C. § 3553(a)(2)(A). Muller’s psychological troubles are no reason to sentence below forty years. They do not bear on his culpability, and Muller has presented no evidence that psychological treatment could ever make him less dangerous. Finally, the possibility of state prosecution has no bearing on how this Court should fashion its sentence to punish the Defendant and protect the public.

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¹ The guidelines range would be 168-210 months if this defendant had done none of these things except kidnap, make a ransom demand, and plead guilty. *See* U.S.S.G. § 2A4.1(a), (b)(1).

² Further, Ms. Huskins has bravely stated through counsel that the Government “may mention any and all facts for sentencing, including the rapes.”

1 **B. A Series of Escalating Similar Crimes**

2 Muller committed this offense as part of a pattern of escalating conduct. The PSR does not
3 increase Muller's criminal history category pursuant to U.S.S.G. § 4A1.3(a)(2)(E), but the Court should
4 still sentence in light of the evidence that this offense was the penultimate one in a pattern of similar
5 serious crimes. *See United States v. Truong*, 587 F.3d 1049, 1052 (9th Cir. 2009); 18 U.S.C.
6 § 3553(a)(2)(C).

7 In 2009, Muller moved from Cambridge, Massachusetts to Menlo Park, California. PSR ¶ 105.
8 On September 29, 2009, in Menlo Park, a masked man entered a woman's residence, bound her hands
9 and feet, put a mask or goggles over her eyes, and alternately warned her "stop screaming, or I'll hurt
10 you," and reassured her to "calm down" during the "robbery." PSR ¶ 85. The intruder demanded
11 information useful for identity theft and gave the victim a soporific liquid like Nyquil. PSR ¶ 101.

12 On October 18, 2009, a woman in Palo Alto was similarly restrained, blindfolded, and ordered to
13 turn over financial and electronic account information. A man who seemed to be part of a group told her
14 he was going to rape her. He attempted to do so, but the victim talked him out of carrying out the rape.
15 The intruder ordered the victim to choose between drinking Nyquil, being injected with a drug, or being
16 shocked with a stun gun. PSR ¶ 86.

17 Muller was questioned as a suspect in these incidents. He was identified because, a few days
18 earlier, police had contacted him acting suspiciously near where the home invasions later occurred. PSR
19 ¶ 86. Then, while under overt investigation, on November 13, 2009, Muller fled to Utah and instructed
20 his then-wife not to tell anyone where he was going. PSR ¶¶ 117-8.

21 On November 29, 2012 in Palo Alto, a woman reported that she awoke in her bedroom to a man
22 who had entered her apartment as she slept. The man pinned her to her bed and hurt her. She believed
23 she was going to be raped or killed, but the man left after stealing some property. That woman lived less
24 than a mile from Muller's wife's address. PSR ¶ 87. Two weeks later, Palo Alto police stopped Muller
25 for a traffic violation. PSR ¶ 92. When they arrested him on an outstanding warrant, they found him in
26 possession of burglary tools. *Id.* Muller would not even give a straight answer about where he lived.

27 *Id.*

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Muller was finally caught by Alameda County authorities. It is not hard to guess what Muller had planned to do in the early morning hours of June 15, 2015 in Dublin. PSR ¶ 39. Muller, “who was wearing black clothing and a mask over his face, entered the master bedroom and woke the [adult occupants of the house] with a red laser beam and a flashlight. The [parents] were ordered to lie face down on the bed and told if they followed the burglar’s instructions, their daughter would be safe.” *Id.* Muller fled after a melee, but left behind zip-ties and the cell phone that led to his arrest. *Id.* Muller has been convicted of this offense. PSR ¶ 93.

The foregoing are undisputed facts in the PSR and the Court may rely on them. *See United States v. Ameline*, 409 F.3d 1073, 1085-86 (9th Cir. 2005) (en banc). In light of the similarities, Muller’s proximity to the crimes, his 2009 flight under investigation, his 2012 arrest in possession of burglary tools, the Vallejo kidnapping, and the Dublin burglary, the Court should go further and infer that Muller committed all five of these attacks and impose a sentence that sufficiently protects the community from his further crimes.

C. The Psychological Manipulation of the Victims

After meeting Muller, the Probation Officer has concluded, “Muller is very intelligent and knows how to manipulate things in his favor.” PSR p. 32. Denise Huskins similarly observed, “He used his charm and intellect to psychologically torture her.” PSR ¶ 57. It was an important aspect of the offense in this case that Muller used elaborate artifice to convince his victims that he was only one reluctant member of a gang. As Muller later wrote in his March 28, 2015 email to the press, “The details of the case are unusual, and include conflicting information and deliberate obfuscation. This was intended, in order to make the crime more likely to succeed and to cover our tracks in case it did not.” PSR at p. 42. Muller is obviously intelligent and capable of effective planning and self-presentation. He holds degrees from Pomona College (B.A. 2003) and Harvard Law School (J.D. 2006). PSR ¶ 127. He was an instructor in the Harvard Law School Clinical Program on Refugee Rights and Human Rights Law and speaks four languages. PSR ¶¶ 130, 135.

Muller had conducted reconnaissance on his Vallejo victims³ and he came prepared to use

³ Muller used a drone to record video of the victims together in the home. PSR ¶ 45. There is evidence that Muller actually entered the house some time prior to the kidnapping. PSR ¶ 45 n.8.

artifice to terrorize. His “gun” was a water pistol that Muller had painted black and duct-taped to a flashlight and laser pointer. PSR ¶ 44. Muller brought headphones with a pre-recorded message in which the “group” threatened to punish noncompliance with electric shock or facial laceration. PSR ¶ 88. Muller had a military-style vest that had a wireless speaker in one of its mesh pockets. PSR ¶ 45. That speaker was able to play the audio file that agents later found on Muller’s computer: apparent sounds of a group of people urgently whispering to each other during the kidnapping. PSR ¶ 45 n.5. Although Muller blindfolded the victims and made it clear they were not to look up, Muller also had a blow-up mannequin clothed in military-style fatigues and attached to large bendable wires to stand it upright. PSR ¶¶ 21, 44.

Muller also used this deceit to manipulate Denise Huskins. She recognized that Muller was using power and reassurance to control her. She told the Probation Officer,

Muller was so manipulating that he knew how to use his “niceness” to put her in a position of no power or control. Muller continued with the compliments and told her, “You are so strong; you are handling this very well.” Ms. Huskins said Muller seemed in awe that she was doing so well. Muller told her she would suffer from this for a very long time.

PSR ¶ 55. When Muller committed rape, he was video recording it, he wanted it to look a certain way, and he was disappointed when it first did not. PSR ¶¶ 32, 45 n.6, 53-4. Muller wanted to rape under the false pretense that he, the rapist, was unwilling and coerced. He wanted to try to avoid full recognition of his depravity. This continued until the moment he released Ms. Huskins. Muller told her that he was sorry that they had “met under these circumstances.” PSR ¶ 56.

Muller used the story of a kidnapping crew to the same end in his emails. On March 26, 2015, the “group” expressed concern for Ms. Huskins:

In what I suppose would be a case of reverse Stockholm syndrome, we (and particularly the one in charge of holding her during the operation) were very impressed with the strength she showed and who she was as we passed the time talking to her. We are criminals I suppose, but we have consciences and seeing the impact of our actions on someone deeply affected us and caused us to reconsider our lives.

PSR at p. 39.⁴ Muller still wanted Ms. Huskins to believe that the rape was a result of an “argument

⁴ Only Muller ever talked to Ms. Huskins. And prior to the assault, the cameras were already recording when he carefully set them up and tested their viewing angles. Muller was the only one there.

1 within the team.” PSR at p. 40.

2 Muller did not reconsider his life. Rather, he went on to carry out the unsuccessful similar attack
3 in Dublin. The Court at sentencing will reflect on Muller’s track record of carrying out serial acts of evil
4 while uttering false words of kindness, excuse, and regret. Muller’s cannot be credited when he says,
5 “All I’ve wanted to do in life is help people. I’ve done the exact opposite. I am very sorry.” PSR ¶ 67.

6 **D. Muller’s Psychological History Does Not Favor a Sentence Below Forty Years**

7 Some of Muller’s claims about his psychological history are verified and some are not. PSR
8 ¶¶ 114-125. The Plea Agreement in this case contemplated a lengthy presentence investigation so that
9 Muller could seek an opinion about his mental condition. Plea Agr., Dkt. 43, ¶ VI.E. But there is no
10 expert evidence to support the conclusion that any mental condition makes Muller any less morally
11 culpable for his crime and there is no expert evidence to support the conclusion that any kind of mental
12 health treatment could ever make Muller any less dangerous.

13 Nothing about Muller’s mental health history changes what is required for just punishment and
14 public safety: Muller must remain incarcerated until he is physically enfeebled from old age.

15 **E. The Possibility of State Prosecution Does Not Favor a Lower Sentence in Federal**
16 **Court**

17 There have been public reports that a district attorney is considering charges against Muller. But
18 the possibility of such proceedings should not affect this Court’s sentence, which itself must reflect
19 Muller’s full relevant conduct, culpability, and dangerousness. Moreover, this Court should not reduce
20 Muller’s federal sentence based on speculation. There is no guarantee that he will face consecutive
21 punishment by another sovereign. *See Truong*, 587 F.3d at 1052.

22 **IV. CONCLUSION**

23 The Government respectfully requests that the Court sentence Muller to no more and no less than
24 forty years. As Muller will no doubt argue, under section 3553(a) a district court should exercise its
25 sentencing discretion in a way that is sufficient, but not greater than necessary to accomplish the
26 purposes of sentencing. The so-called parsimony clause “is a guidepost, an overarching principle that
27

28 PSR ¶ 45 n.7.

1 directs judges in the appropriate exercise of their sentencing discretion within the sentencing range
2 authorized and consideration of factors prescribed by Congress.” *United States v. Chavez*, 611 F.3d
3 1006, 1010 (9th Cir. 2010). Muller’s culpability and dangerousness together require that he be
4 sentenced to forty years imprisonment.

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6 Dated: March 13, 2017

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8 By: /s/ MATTHEW D. SEGAL
9 MATTHEW D. SEGAL
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